IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SEVENTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 19183 of 2002

Between:

Mohd. Sharif S/o.Nizamuddin,
R/o.Nanakramguda village,

Serilingampally Mandal R.R.District.

..... PETITIONER

AND

1 The Deputy Collector & Mandal Revenue Officer,
Serilingampally Mandal, R.R.Dist.
2 The District Collector,
R.R.District at Khairtabad, Hyderabad.
3 Andhra Pradesh Industrial Infrastructure Corporation Limited,
Basheerbagh, Hyderabad, rep. by its Managing Director.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the 1st respondent in issuing the impugned notice No.B/1979/2000-5, dt.5-9-2002 calling upon the petitioner to deliver the possession of the land within a week of receipt of the impugned notice without paying **full market value for the assigned land as compensation**, as arbitrary, illegal, and violative of the Fundamental Rights guaranteed to the petitioner U/Articles 14 and 21 of the Constitution of India and issue the consequential direction to the respondents not to dispossess the petitioner in Sy.No.115/8 admeasuring Ac.5-00 Gts., situated at Nanakramguda Village, Serilingampally Mandal, R.R.District. (Amended as per order dt.17-11-2004 in W.P.M.P.No.8880 of 2004).

Counsel for the Petitioner: MR. CH.SIDDAIAH

Counsel for Respondents 1 and 2: ASSISTANT GOVERNMENT PLEADER FOR REVENUE (ASSIGNMENT)

Counsel for Respondent No.3: MR. R.SUBBA RAO

The Court made the following:

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ORDER:

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The petitioner claims that he was assigned land in Survey No.115/8 admeasuring Acs.5-00 in the year 1977 under Laoni Rules and that he has been cultivating the land. According to the petitioner, the Government embarked on a programme of allotting land to multi national companies for consideration and therefore, decided to resume the lands assigned to various persons in Nanakramguda Village, Serilingampally Mandal of Ranga Reddy District, without duly following the orders of the Government in G.O.Ms.No.1307 Revenue (Assignment-I) Department, dated 23-12-2003, wherein the Government ordered to award reasonable compensation when assigned lands are resumed for public purpose. Be that as it is, the petitioner having come to know that the first respondent issued a notice bearing No.B/1979/2000-5, dated 05-09-2002, calling upon the occupant to deliver possession in a week days, approached this Court by filing the writ petition. He prayed for the following relief:

"To issue a Writ, order or direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the 1st respondent in issuing the impugned notice No.B/1979/2000-5 dt.5-9-2002 calling upon the petitioner to deliver the possession of the land within a week of receipt of the impugned notice without paying **compensation as required under G.O.Ms.No.1307 Revenue (Assignment-I) Department dt.23-12-1993**, as arbitrary, illegal and violative of the Fundamental Rights guaranteed to the petitioner under Articles 14 and 21 of the Constitution of India and issue the consequential direction to the respondents not to dispossess the petitioner in Survey No.115/8 admeasuring Ac.5-00 gts. situated at Nanakramguda Village, Serilingampally Mandal, Ranga Reddy District, and to pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case."

The petitioner mainly contends that even when the Government resumed the assigned lands, the assignees are to be paid compensation and therefore, he made a number of representations to the Government in vain. When the matter was pending before this Court, a Larger Bench of seven learned Judges of this Court in ***Land Acquisition Officer-cum-R.D.O., Chevella Division, Hyderabad and others v. Mekala Pandu and others*** while over-ruling the earlier Larger Bench judgment of five learned Judges of this Court in ***State of A.P. v. Bondapalli Sanyasi***, held that while the Government lands are resumed, the assignees are entitled for payment of compensation equivalent to the full market value of the land and other benefits on

par with the owners of the land. Therefore, the petitioner filed an application being W.P.M.P.No.8880 of 2004 praying this Court for permission to amend the prayer by substituting the words "full market value for the assigned land as compensation" in the place of "compensation as required under G.O.Ms.No.1307 Revenue (Assignment-I) Department dt.23-12-1993." This application is accordingly ordered. After the amendment, the prayer in the writ petition reads as under:

"To issue a Writ, order or direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the 1st respondent in issuing the impugned notice No.B/1979/2000-5 dt.5-9-2002 calling upon the petitioner to deliver the possession of the land within a week of receipt of the impugned notice without paying **full market value for the assigned land as compensation**, as arbitrary, illegal and violative of the Fundamental Rights guaranteed to the petitioner under Articles 14 and 21 of the Constitution of India and issue the consequential direction to the respondents not to dispossess the petitioner in Survey No.115/8 admeasuring Ac.5-00 gts. situated at Nanakramguda Village, Serilingampally Mandal, Ranga Reddy District, and to pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case."

The first respondent has filed a counter affidavit. Though it is admitted that the land in Survey No.115/8 was assigned to the petitioner, it is stated that subsequently, the petitioner sold away the land through registered sale deeds in contravention of the provisions of Section 3(2) of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for brevity, 'the Act') and that the petitioner is not in possession of the land. It is further stated that action was initiated under the Act and by proceedings dated 31-12-2003 orders were passed under Section 4(a) of the Act to resume the lands to the Government by taking possession from the purchasers duly evicting them. It is further stated that when the third respondent Corporation sent a requisition to the District Collector, Ranga Reddy District, to handover an extent of Acs.43-23 gts. in Nanakramguda Village, in addition to Acs.108-30 gts. of the Government land, action was initiated and notices were served on the assignees to handover possession of the land. A notice was also issued to the occupant of the land in question on 05-09-2002. It is further stated that initially the land was resumed by an order dated 30-04-2003, against which purchasers filed W.P.No.17955 of 2003. This Court disposed of the said writ petition directing the first respondent to issue notice to the purchasers and pass appropriate orders and thereafter, on 31-12-2003, orders of resumption were passed. Therefore, the first respondent disputes the right of the petitioner to claim compensation as per the orders of the Government in G.O.Ms.No.1307 Revenue (Assignment-I) Department, dated 23-12-1993.

The learned Counsel for the petitioner, Sri N.Subba Reddy, submits that the orders of resumption passed by the first respondent are bad for violation of principles of natural justice and in contravention of Section 3 of the Act read with Rule 3(1) of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977 (for brevity, 'the Rules'). Secondly, he would contend that even if the first respondent has passed orders validly for resumption of the land to the Government, by reason of Section 4(1) of the Act, the original assignee is entitled for restoration of the land once and therefore, the petitioner is entitled for the compensation payable as per the judgment of the Larger Bench of this Court in **L.A.O. v. M.Pandu** (supra). These

contentions are refuted by the learned Assistant Government Pleader for Revenue (Assignment).

A counter affidavit is filed before this Court along with the application for vacate stay on 07-10-2004. But, the petitioner has not chosen to file any reply affidavit denying the various allegations and therefore, it stands proved that the petitioner sold away the assigned land in contravention of Section 3(1) of the Act. Therefore, it was always well within the powers of the first respondent to resume the land. The submission of the learned Counsel for the petitioner that while passing an order under Section 4 of the Act, an assignee who alienates the land to a third party should be given a notice, is misconceived. Rule 3 of the Rules reads as under:

"**3. Procedure for eviction of the transferee and taking possession and restoration of assigned lands:-** The District Collector or the authorized Officer shall, before taking action under clause (a) and (b) of sub-section (1) of Section 4 of the Act, issue a notice in Form I to the person who acquired any assigned land in contravention of the provisions of sub-section (2) of the Sec.3 of the Act. This notice shall be served by delivering a copy to him or to some adult male member of the family at his usual place of abode or to his authorized agent, or by affixing a copy thereof at some conspicuous place of his last known place of residence or on some conspicuous part of the land acquired by him. After the expiry of fifteen days specified in the notice the District Collector or the authorized officer shall consider the representation, if any, with reference to the said notice and pass such orders as he thinks fit and proper. It is held that the provisions of sub-section (1) of Section 3 of the Act have been contravened in respect of any assigned land, a copy of the order shall be communicated to the village officer for taking possession of the land and thereupon the land shall be disposed of in accordance with sub-clause (b) of clause (1) of Section 4 of the Act."

A plain reading of the above would show that before passing any order under Section 4 of the Act, the competent authority is required to issue notice in Form I to the person who acquired any assigned land in contravention of the provisions of Section 3(2) of the Act. The same does not contemplate any notice to the assignee who breached provisions of law. Further, under Section 4(1)(b) of the Act, the Mandal Revenue Officer, after taking possession of the assigned land after evicting the person in possession, may restore the assigned land to the original assignee or his legal heir. However, if such restoration to the original assignee would not be required more than once. This would indicate that the Act is intended to protect the interest of the assignee. When the law requires restoration of the land to the original assignee who transferred the land in contravention of Section 3(1) of the Act, no prejudice would be caused by non-issue of notice because action under the Act is for his benefit only provided he satisfies requirements of law. It is now axiomatic that unless and until a person is able to demonstrate the actual prejudice caused by non-issue of notice, law does not require a pre-decisional or
post-decisional notice to such person. The first submission, therefore, is rejected.

Insofar as the second submission is concerned, the same has force, but subject to a rider. As on the date of filing of the writ petition, the petitioner was not in possession of the land. Indeed, the petitioner impugns a notice dated 05-09-2002 issued to one

Sajan Singh. Be that as it is, even if a notice is issued to the petitioner requesting to handover possession, as the petitioner is not in possession, there cannot be any direction to restore physical possession of the land. As held by the Larger Bench of this Court in **L.A.O. v. M.Pandu** (Supra), as and when the assigned land is resumed, the assignee is entitled for full compensation and therefore, the remedy of the petitioner lies in approaching the competent authority for such compensation. There cannot be a Mandamus as prayed for. It is, however, open to the petitioner to approach the first respondent and stake his claim in the event of the subsequent alienees loosing the appeal. In the event the appellate authority holds that subsequent alienees are entitled for the benefit of
sub-section (5) of Section 3 of the Act on the ground that they are also landless poor persons and purchased the assigned land in good faith, the petitioner would not be entitled for any such compensation. The second question is answered accordingly.

The writ petition, with the above observations and directions, is disposed of. The interim orders passed shall stand vacated. No costs.

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V.V.S. RAO, J

November 17, 2004.

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Deputy Collector and Mandal Revenue Officer, Serilingampally

Mandal, Ranga Reddy District.

2. The District Collector, Ranga Reddy District at Khairatabad, Hyderabad.

3. The Managing Director, Andhra Pradesh Industrial Infrastructure

Corporation Limited, Basheerbagh, Hyderabad.

4. Two CCs to the Assistant Government Pleader for Revenue

(Assignment), High Court Buildings, Hyderabad (O.U.T).

5. Two CD copies.